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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

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11 UNITED STATES OF AMERICA,	}	2:09-CR-078-JCM-(RJJ)
12 Plaintiff,	}	GOVERNMENT'S PROPOSED
13 vs.	}	JURY INSTRUCTIONS
14 SAMUEL DAVIS, and,	}	
15 SHAWN RICE,	}	
16 <u>Defendants.</u>	}	

17 PROPOSED JURY INSTRUCTIONS

18 The Government respectfully requests that the Court include in its charge to the
19 jury the following instructions from the Ninth Circuit Manual of Model Jury
20 Instructions - Criminal, 2003 Edition, and other special instructions requested by the
21 Government. The source of each such instruction is reflected on the same.
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1 A. General Instructions

- 2 1. Duties of Jury to Find Facts and Follow Law (3.1)
- 3 2. Charge Against Defendants Not Evidence - Presumption of Innocence -Burden
4 of Proof (3.2)
- 5 3. Defendant's Decision Not To Testify (3.3)
- 6 4. Defendant's Decision To Testify (3.4)
- 7 5. Reasonable Doubt - Defined (3.5)
- 8 6. What is Evidence (3.6)
- 9 7. What is Not Evidence (3.7)
- 10 8. Direct and Circumstantial Evidence (3.8)
- 11 9. Credibility of Witnesses (3.9)
- 12 10. Separate Consideration of Multiple Counts - Multiple Defendants (3.14)

13 B. Substantive Law

- 14 11. Aiding and Abetting (5.1)
- 15 12. Money Laundering Conspiracy- Statute (Count 1)
- 16 13. Money Laundering Conspiracy- Elements (Count 1)
- 17 14. Money Laundering - Statute (Counts 2-31)
- 18 15. Money Laundering - Elements (Counts 2-31)
- 19 16. Conspiracy - Knowing of an Association with Other Conspirators (8.18)

20 D. Closing Instructions

- 21 17. Duty to Deliberate (7.1)
- 22 18. Consideration of Evidence (7.2)
- 23 19. Use of Notes (7.3)
- 24 20. Jury Consideration of Punishment (7.4)
- 25 21. Verdict Form (7.5)
- 26 22. Communication with Court (7.6)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,)	2:09-CR-078-JCM-(RJJ)
Plaintiff,)	
vs.)	GOVERNMENT'S PROPOSED
)	JURY INSTRUCTIONS
SAMUEL DAVIS, and)	
SHAWN RICE,)	
Defendants.)	

DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

9TH CIR. CRIM. JURY INSTR. 3.1 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

CHARGE AGAINST DEFENDANTS NOT EVIDENCE

PRESUMPTION OF INNOCENCE - BURDEN OF PROOF

The indictment is not evidence. The defendants have pleaded not guilty to the charges. The defendants are presumed to be innocent and do not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

9TH CIR. CRIM. JURY INSTR. 3.2 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

DEFENDANT’S DECISION NOT TO TESTIFY

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

9TH CIR. CRIM. JURY INSTR. 3.3 (2003)

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

DEFENDANT'S DECISION TO TESTIFY

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

9TH CIR. CRIM. JURY INSTR. 3.4 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

REASONABLE DOUBT - DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

9TH CIR. CRIM. JURY INSTR. 3.5 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

WHAT IS EVIDENCE

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

9TH CIR. CRIM. JURY INSTR. 3.6 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

9TH CIR. CRIM. JURY INSTR. 3.7 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

9TH CIR. CRIM. JURY INSTR. 3.8 (2003)

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness's testimony;
6. the reasonableness of the witness's testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

9TH CIR. CRIM. JURY INSTR. 3.9 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

1 SEPARATE CONSIDERATION OF MULTIPLE COUNTS

2 MULTIPLE DEFENDANTS

3 A separate crime is charged against one or more of the defendants in
4 each count. The charges have been joined for trial. You must decide the case
5 of each defendant on each crime charged against that defendant separately.
6 Your verdict on any count as to any defendant should not control your verdict
7 on any other count or as to any other defendant.

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25 9TH CIR. CRIM. JURY INSTR. 3.14 (2003)

26 GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

AIDING AND ABETTING

A defendant may be found guilty of the crime charged, even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First, the crime charged was committed by someone;

Second, the defendant knowingly and intentionally aided, counseled, commanded, induced or procured that person to commit the crime charged; and

Third, the defendant acted before the crime was completed.

It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime.

The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit the crime charged.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

9TH CIR. CRIM. JURY INSTR. 5.1 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

Count 1

Conspiracy To Commit Money Laundering

Title 18, United States Code, Section 1956(h) provides, in part, as follows:

Any person who conspires to commit any offense defined in this section . . . shall be guilty of an offense against the United States.

Title 18, United States Code, Section 1956(h)

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

Count 1

Conspiracy To Commit Money Laundering - Elements

In order to establish the offense charged in the indictment, the government must prove the following elements beyond a reasonable doubt:

- 1) that two or more persons agreed to commit at least one crime alleged in the indictment on or about the dates alleged, and;
- 2) that the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

9TH CIR. CRIM. JURY INSTR. 8.05A (2003)(modified)

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

Counts 2-31

Money Laundering

Title 18, United States Code, Section 1956, provides in pertinent part:

(3) Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; . . .

conducts or attempts to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be guilty of a crime against the United States. For purposes of this paragraph, . . . the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a federal official authorized to investigate or prosecute violations of this section.

(c) As used in this section--

(3) the term “transaction” includes a . . . transfer, delivery, or other disposition . . . ;

(4) the term “financial transaction” means (A) a transaction . . . (ii) involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce

(5) the term “monetary instrument” means (ii) Coin or currency of the United States . . . personal checks, bank checks

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

Counts 2-31

Money Laundering - Elements

The defendant is charged in Counts 2-31 of the indictment with conducting and attempting to conduct a financial transaction to promote bank fraud in violation of Section 1956(a)(1)(A) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant conducted or intended to conduct a financial transaction involving property that was represented to be the proceeds of specified unlawful activity;

Second, the defendant knew that the property represented the proceeds of specified unlawful activity; and

Third, the defendant acted with the intent to promote the carrying on of specified unlawful activity or knowing that the transaction was designed in whole or part to conceal or disguise the nature, location, source of ownership or control of the proceeds of specified unlawful activity.

A financial transaction is a transaction involving: the movement of funds by wire or other means; one or more monetary instruments; or, the use of a financial institution which is engaged in interstate or foreign commerce or the activities of which affect interstate or foreign commerce in any way.

9TH CIR. CRIM. JURY INSTR. 8.120 (2003)(modified)

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

1 CONSPIRACY

2 KNOWING OF AND ASSOCIATION WITH OTHER CONSPIRATORS

3 A conspiracy may continue for a long period of time and may include
4 the performance of many transactions. It is not necessary that all members of
5 the conspiracy join it at the same time, and one may become a member of a
6 conspiracy without full knowledge of all the details of the unlawful scheme or
7 the names, identities, or locations of all of the other members.

8 Even though a defendant did not directly conspire with other
9 conspirators in the overall scheme, the defendant has, in effect, agreed to
10 participate in the conspiracy if it is proved beyond a reasonable doubt that:

11 (1) the defendant directly conspired with one or more conspirators to
12 carry out at least one of the objects of the conspiracy,

13 (2) the defendant knew or had reason to know that other conspirators
14 were involved with those with whom the defendant directly conspired,
15 and,

16 (3) the defendant had reason to believe that whatever benefits the
17 defendant might get from the conspiracy were probably dependent
18 upon the success of the entire venture.

19 It is no defense that a person's participation in a conspiracy was minor
20 or for a short period of time.

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25 9TH CIR. CRIM. JURY INSTR. 8.18 (2003)

26 GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

9TH CIR. CRIM. JURY INSTR. 7.1 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

1 CONSIDERATION OF EVIDENCE

2 Your verdict must be based solely on the evidence and on the law as I
3 have given it to you in these instructions. However, nothing that I have said or
4 done is intended to suggest what your verdict should be—that is entirely for
5 you to decide.

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25 9TH CIR. CRIM. JURY INSTR. 7.2 (2003)

26 GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

9TH CIR. CRIM. JURY INSTR. 7.3 (2003)

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

JURY CONSIDERATION OF PUNISHMENT

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

9TH CIR. CRIM. JURY INSTR. 7.4 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

VERDICT FORM

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the Court that you are ready to return to the courtroom.

9TH CIR. CRIM. JURY INSTR. 7.5 (2003)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. ____

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

9TH CIR. CRIM. JURY INSTR. 7.6 (2003)

GOVERNMENT’S PROPOSED JURY INSTRUCTION NO. ____

ADDITIONAL INSTRUCTIONS DURING TRIAL

Due to the potential issues that may arise before a trial, leave is respectfully requested to include such other additional instructions as the Government deems appropriate during the course of the trial.

DATED this 21st day of May, 2010.

Respectfully submitted,

DANIEL G. BOGDEN
United States Attorney

/s/ J. Gregory Damm

J. GREGORY DAMM
Assistant United States Attorney

Certificate of Service

I, J. Gregory Damm, hereby certify that I am an employee of the United States Department of Justice, and that on this day I served a copy of the following: GOVERNMENT'S PROPOSED JURY INSTRUCTIONS, upon counsel for all defendants appearing in this matter via the CM/ECF system, by electronically filing said GOVERNMENT'S PROPOSED JURY INSTRUCTIONS and mailing a copy postage prepaid to Shawn Talbot Rice, P.O. Box 700, #81, Ash Fork, Arizona 86320.

Dated: May 21, 2010

/s/ Elaine Woolery
Legal Assistant to J. Gregory Damm
Assistant United States Attorney
District of Nevada